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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-172

CHRYSLER CORPORATION,
Petitioner,

VERSUS

OPAL I. VAUGHN, Guardian of the Person and Estate of Johnnie B. Vaughn, and MID-CONTINENT CASUALTY COMPANY,
Respondents.

BRIEF IN OPPOSITION AND RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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September, 1971

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY. PH. 235-0030

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STATEMENT OF THE CASE

The employer of the injured party purchased a new Dodge truck manufactured by Chrysler Corporation from an authorized Dodge dealer. An accident occurred due to a defect in the steering mechanism which existed at the time the truck was purchased. One of the defenses of Chrysler Corporation, and the only one relied upon in this Petition for Certiorari to the Circuit Court for the Tenth Circuit, is that subsequent to its manufacture, the steering mechanism was reassembled by Dodge Trucks, Inc., a wholly-owned subsidiary of Chrysler Corporation.

The references on pages three and eight of the Petition for Writ of Certiorari that the modification of the steering assembly was by "an independent truck dealer" are not correct.

The trial judge, who prior to appointment to the federal bench was a distinguished Oklahoma district judge, instructed the jury that "the modifications made by Dodge Trucks, Inc., would not relieve Chrysler Corporation of liability in this case . . . under the laws of the State of Oklahoma a manufacturer is liable in tort when an article it places on the market proves to have a defect that causes injury to a human being and said manufacturer cannot escape such liability by tracing the defect to one of its wholly owned subsidiaries . . . ."

The Circuit Court in its opinion states that "Dodge Trucks is a wholly-owned subsidiary, once removed, of Chrysler Corporation, the original manufacturer." (Appendix, p.v.)

ARGUMENT

The purchaser has the right to assume the manufacturer, who sells his product through an authorized dealer, is responsible for injuries caused by a defective product.

This was the reasoning of the Court in *Vandermark* v. *Ford Motor Co.*, 391 P.2d 168 (1964), 37 Cal.Rptr. 896. The Court says:

> "Ford contends, however, that it may be held liable for negligence in manufacturing the car or strictly liable in tort for placing it on the market without proof that the car was defective when Ford relinquished control over it. Ford points out that in this case the car passed through two other authorized Ford dealers before it was sold to Maywood Bell and that Maywood Bell removed the power steering unit before selling the car to Vandermark.

* * * * * *

"These rules focus responsibility for defects, whether negligently or non-negligently caused, on the manufacturer of the completed product, and they apply regardless of what part of the manufacturing process the manufacturer chooses to delegate to third parties. It appears in the present case that Ford delegates the final steps in that process to its authorized dealers. It does not deliver cars to its dealers that are ready to be driven away by the ultimate purchasers but relies on its dealers to make the final inspections, corrections, and adjustments necessary to make the cars ready for use. Since Ford, as the manufacturer of the completed product, cannot delegate its duty to have its cars delivered *to the ultimate purchaser free from* dangerous defects, it cannot escape liability on the ground that the defect in Vandermark's car may have been caused by something one of its authorized dealers did or failed to do."

In reaching this conclusion the California Court referred to its previous decision in *Greenman* v. *Yuba Power Products, Inc.*, 27 Cal.Rptr. 697, 377 P.2d 897 (1962). The Oklahoma Court based its decision in the *Marathon Battery* case, 418 P.2d 900 (1926), on *Greenman* v. *Yuba, supra*, thereby embracing that decision as reflecting Oklahoma law.

The finished product was sold in the ordinary course of business by an authorized dealer, Clark Motor Co., as a new vehicle manufactured by Chrysler Corporation. Chrysler Corporation is responsible for a safe vehicle being delivered to the purchaser. It cannot avoid this responsibility by delegating responsibility to its wholly-owned subsidiary.

The evidence adduced from the secretaries of Chrysler Corporation, Chrysler Motors Corporation, and Dodge Trucks, Inc., showed that Dodge Trucks, Inc., was merely an agency of Chrysler Corporation through which it performed an essential part of its business.

The Chrysler Corporation had changes made by Dodge Trucks, Inc., from time to time which were referred to as conversions (Transcript, p. 421). All medium and heavy duty trucks were sold to the dealers by Dodge Trucks, Inc., as new trucks (Transcript, p. 420). The front axle was changed on the truck in question to make it proper for heavier work, which required the steering to be changed (Transcript, pp. 427-428).

For its convenience in marketing medium and heavy duty trucks, Chrysler Corporation established Dodge Trucks, Inc., to sell its products to dealers as new vehicles. It established a policy that when it was desirable to modify a truck to meet a purchaser's needs, such modification would be done according to Chrysler Corporation policy by Dodge Trucks, Inc., and the vehicle delivered to the dealer as a new Chrysler product.

Regardless of who did it, the purchaser was entitled to a safe vehicle when he purchased a new Chrysler Corporation product through an authorized dealer.

There is only one corporation which has stock issued to the public, Chrysler Corporation. A primary part of its business is the manufacture and sale of automotive vehicles. For convenience, a corporation was organized called Chrysler Motors Corporation, all of the capital stock being issued to Chrysler Corporation. Vehicles are sold by Chrys-

ler Corporation to Chrysler Motors Corporation for resale. The sale of these vehicles is an integral part of the business of Chrysler Corporation, without which it could not function. It was then found desirable, in 1964, for a corporation to be organized under the name of Dodge Trucks, Incorporated, for the purpose of servicing and selling vehicles both to the public and to authorized dealers. The servicing and selling of these vehicles is an integral part of the business of Chrysler Corporation, without which it could not function. They could have been, and formerly were, divisions of Chrysler Corporation, rather than independent corporations.

"Q. Mr. Bond, during the time you were Secretary of Chrysler Corporation, do you know why they formed these subsidiaries as corporations rather than as divisions of Chrysler Corporation?

A. What subsidiaries are we talking about?

Q. Well, Chrysler Motors Corporation, Dodge Trucks, Inc., Chrysler Realty Corporation, any one of the hundred.

A. Well, I think the answer would vary with the subsidiary we are talking about. I think generally they were formed because there are financial advantages to the parent and to the subsidiary. Perhaps tax advantages. And that it helps to pinpoint areas of responsibility and to charge people with responsibility on a sort of profit center basis" (Tr., p. 267).

Chrysler Corporation formerly operated its sales of trucks directly. Chrysler Motors Corporation and its subsidiary, Dodge Trucks, Inc., were set up for convenience in

carrying out this essential part of Chrysler Corporation's business.

In 19 Am.Jur.2d, *Corporation*, p. 218, the editors say:

> "However, a corporation which exercises actual control over another, operating the latter as a mere instrumentality or tool, is liable for the torts of the corporation thus controlled. In such cases, the separate identities of parent and subsidiary or affiliated corporations may be disregarded."

The parent company was held liable for the tort of a subsidiary in *St. Louis & S.F.R. Co.* v. *Sanford*, 54 Okla. 185, 153 Pac. 650 (1915), where the subsidiary operated part of a railroad system, and in *Wallace* v. *Tulsa Yellow Cab Taxi & Baggage Co.*, 178 Okla. 15, 61 P.2d 645 (1936), where both companies were managed by substantially the same personnel in the same place of business.

In the annotation on liability of the parent company for the torts of a subsidiary, factors deemed relevant are suggested in 7 A.L.R.3d on page 1355, as follows:

> "(1) Presence in both corporations of the same officers or directors.
>
> "It will be observed that all of the officers of the two subsidiaries were officers of Chrysler Corporation, and were freely exchanged, and often held offices in two of the corporations at the same time.
>
> "(2) Common shareholders.
>
> "In this case there is no stock in the subsidiary corporations in the hands of the public but stock in Chrysler Motors Corporation is owned wholly by Chrysler Corporation, and stock in Dodge Trucks, Inc. is owned wholly by Chrysler Motors Corporation.

"(3) Financial support of the subsidiary's operations by the parent.

"All of the funds necessary for the operations of the subsidiaries were furnished by Chrysler Corporation.

"(4) Underwriting the incorporation and purchase of all of the capital stock of the subsidiary by the parent corporation.

"This is true in this case.

"(5) The fact that the subsidiary was organized with a grossly inadequate capital structure.

"Financing is done by Chrysler Corporation either directly or through its wholly owned subsidiary Chrysler Credit Corporation.

"(6) A joint accounting and payroll system.

"All of the checks for payroll were written by Chrysler Corporation.

"(7) The subsidiary lacks substantial business contracts with any save the parent and operates solely with assets conveyed by the parent corporation.

"True in this case.

"(8) In the financial statements of the parent, the subsidiary is referred to as a division of the parent corporation or obligations are assumed to be those of the parent.

"No testimony appears as to this matter.

"(9) The property of the subsidiary is used by the parent corporation as its own.

"No testimony appears as to this matter.

"(10) The individuals who exercise operating control over the subsidiary exercise it in the interest of the parent.

"No testimony appears as to this matter, but it could hardly be otherwise.

"(11) Failure to observe the formal requirements attributable to the operation of a subsidiary.

"No testimony appears as to this matter."

In *Sisco-Hamilton Co.* v. *Lennon*, 240 F.2d 68 (7th Cir. 1957), there were four corporations, one owning all the stock in the other three, which performed activities under the control of the parent. The holding company was held responsible for the torts of the subsidiary. The Court says:

"The appeal presents a striking illustration of subsidiaries actively implementing each other in rendering services to the plaintiff. This parent corporation cannot sit back on its charter and avoid tort responsibility for its delinquent child."

In *Industrial Research Corp.* v. *General Motors Corporation*, 29 F.2d 623 (N.D. Ohio 1928), the Court says:

"The vast extent of the business of the General Motors Corporation and the variety of its enterprises are matters of such general notoriety, and the reasons why, to conduct such a diversified and extended business, it should employ corporate agencies, are so obvious, that little proof, if any, is necessary to hold the latter as mere adjuncts or agents, especially in the absence of any proof to the contrary; for the court might well take judicial notice of the extent of the business of such an extraordinary and notorious corporation, as we may consider that of a great railroad

enterprise having interstate activities, a doctrine which has already been adjudicated.

* * * * * * *

"It is against sound policy, when a corporation has grown so large, and it has entered into activities so various and so generally distributed, that it finds itself compelled to operate through many subsidiaries, doing nothing directly itself in carrying on its business, to permit it to enjoy exclusively the fruits of such subsidiary activity and to escape the concomitant responsibilities flowing therefrom."

In *Sabloff* v. *Yamaha Motor Co.*, 273 A.2d 606 (1971), the New Jersey Court had occasion to pass on the liability of a manufacturer for assembly made by his authorized dealer. The Court says in part:

"The tightening of the nut on the end of the axle bolt was done by Steele, president of the dealer, as noted above. If the jury should find upon a retrial of this action that the nut was improperly tightened by Steele, thereby causing side play and the locking of the wheel, would Yamaha, the manufacturer, be liable to the purchaser because of its having delegated this partial assembly function to the dealer?

"When a motorcycle, such as that involved herein, is received by Harley-Davidson from Yamaha, the handlebars are removed, the controls are disconnected from the handlebars, and the front wheel, front fender, seat and tail light are removed. The assembly is made by the dealer and the motorcycle is shown and sold to the purchaser in its assembled form.

"A manufacturer should not escape responsibility for breach of its warranty of fitness for purpose, when the breach is caused by an act of improper assembly—the assembly having been entrusted by the manufac-

turer to an authorized dealer, rather than to some employee of the manufacturer. It would be unrealistic to treat a motorcycle manufacturer as a mere purveyor of motorcycle non-assembled parts and relieve it from the warranty of merchantability simply because there is no showing of a defective component part.

"In Vandermark v. Ford Motor Company, 61 Cal.2d 256, 37 Cal.Rptr. 896, 391 P.2d 168 (Cal.Sup.Ct. 1964), it was held that an automobile manufacturer, which did not deliver its automobiles to the dealers ready to be driven away by the ultimate purchasers but relied on the dealers to make final inspections, corrections and adjustments necessary to make the automobiles ready for use, could not escape liability for a defect in the automobile on the ground that it may have been caused by something that an authorized dealer did or failed to do. As the court expressed it:

> '* * * as the manufacturer of the completed product, cannot delegate its duty to have its cars delivered to the ultimate consumer free from dangerous defects, it cannot escape liability on the ground that the defect in Vandermark's car may have been caused by something one of its authorized dealers did or failed to do. [37 Cal.Rptr. at 899, 391 P.2d at 171].'

"Vandermark also was concerned with whether a brake system had been properly installed and adjusted before the accident.

"(2) So, here, where Yamaha did not deliver its motorcycles to its dealer ready to be driven away by the ultimate purchasers but relied on the dealer to put into assembly the non-assembled parts and make the motorcycle ready for use, Yamaha could not escape liability for a defect in the motorcycle on the ground

that it may have been caused by something that its authorized dealer, Harley-Davidson of Essex, did or failed to do in attaching the front wheel to the fork of the subject motorcycle. Yamaha's manual, subsequently published, recognized the danger in this function when it noted a 3 mm. tolerance in the side play—a limit which could be exceeded, according to plaintiff's expert, by insufficient tightening of the particular nut at the end of the bolt.

"If the jury should find that the dealer's lack of a sufficient tightening of the particular nut was the cause of the front wheel's failure to rotate, then the jury might also visit responsibility upon defendant manufacturer for the function delegated by it to be performed by the dealer and not properly performed."

In a case decided by the Supreme Court of Oklahoma on June 15, 1971, *Ford Motor Co.* v. *Schweitzer, a Minor*, 42 O.B.J. 1577, not officially reported, a copy of which is attached as Appendix A, the manufacturer was held liable for damages arising from a defect in the car. The Court says:

"In the present case, a conclusion that the left tie-rod assembly in the steering mechanism of this car was defective when the car was sold and delivered to the plaintiff and was the proximate cause of the car's running off the roadway and of any resulting damages sustained by the plaintiff, would not be mere conjecture but would be within the sphere of legitimate and rational inferences from the established facts favorable to the plaintiff."

While this case is not officially reported, nor considered a precedent under Oklahoma Supreme Court rules, it is indicative of the Oklahoma law.

On page 5 of the Petition, the petitioner refers to certain cases which were decided by the Supreme Court of Oklahoma and which he says are contrary to the decision of the trial court. We respectfully disagree. The decisions referred to are as follows:

Coe v. *Esau,* 377 P.2d 815 (1963), holds the lessor of a filling station is not responsible for the lessee's negligence in installing a filter. It does not appear that the filter was manufactured by the lessor or sold by the lessor. Product liability is not involved.

Cities Service Oil Co. v. *Kindt,* 100 Okla. 64, 190 P.2d 1007 (1948), holds the lessor of a filling station not responsible for injuries to a pedestrian who slipped on oil negligently left on the sidewalk by the lessee. Product liability is not involved.

In *Michael* v. *Branham,* 327 P.2d 440 (1958), plaintiff, who was injured by the explosion of a bottle containing carbonated beverage, failed to show there had been no change of condition after the bottle left the manufacturer. In the case at bar, plaintiff showed the truck's steering had not been tampered with after its purchase from the manufacturer's dealer.

In *Carter Oil Co.* v. *Independent Torpedo Co.,* 107 Okla. 209, 232 Pac. 419 (1924), the Court held that *res ipsa loquitur* did not apply to the premature explosion of nitroglycerin in an oil well, the well not being in the exclusive control of the defendant, and that there was no evidence of negligence on the part of the defendant.

In *Ayers* v. *Amatucci,* 206 Okla. 366, 243 P.2d 716 (1952), the purchaser of a used car, which was destroyed

by fire, sued the dealer contending it was defective when sold to him. He failed to prove the defect existed at the time of sale. In the case at bar, of course, as previously pointed out, there was evidence that the defect existed at the time of the purchase of the truck from the manufacturer's dealer.

Gulf Oil Corporation v. *State*, 360 P.2d 933 (1961), holds a parent corporation not subject to fine for act of its subsidiary.

Sautbine v. *Keller*, 423 P.2d 447 (1967), holds a corporation not bound by quiet title suit against its president.

Wallace v. *Tulsa Yellow Cab Taxi and Baggage Co.*, 178 Okla. 15, 61 P.2d 645 (1936), holds a parent company liable for the tort of its subsidiary under the facts of that case.

None of the foregoing cases decided by the Oklahoma Court are in conflict with the decision in this case.

On page 6 of the Petition, counsel states there is a conflict between circuits, and refers to the decision of the Fifth Circuit in *Helene Curtis Industries, Inc.* v. *Pruitt*, 385 F.2d 841 (5th Cir. 1967), holding that the "plaintiff must prove that the product has not been substantially altered after leaving the maker's control." In the case at bar, plaintiff made such proof.

The remaining case referred to as being inconsistent with the decision of the Tenth Circuit is a very interesting case decided in 1958, *Ford Motor Company* v. *McDavid*, 259 F.2d 261 (4th Cir. 1958), from the Fourth Circuit, involving South Carolina law. The plaintiff was injured due

to a tire blowing out on a Ford automobile, which she contended was due to defective alignment of the tires when the car was purchased. The Court held that the plaintiff failed in her proof that the defect existed when the car was purchased, and makes this comment:

> "If it were shown that the wheels were misaligned by Ford, *it should not be relieved of its responsibility because a dealer under a duty to inspect and correct defects may have been negligent in the performance of its duty.*" (Emphasis added.)

This case is not contrary to the decision of the Tenth Circuit in the case at bar, but in fact is in accord with the decision.

The Circuit Court, in its opinion, points out:

> "We are, of course, entitled to lean on the judgment of the trial judge as knowledgeable and persuasive in the determination of the law and affairs of his resident state. (Citing authorities.) And since the judgment of the trial judge seems to reflect a desirable trend in the rapidly progressive field of product liability, we affirm."

The Circuit Court calls attention to the opinion of the Third Circuit Court in *Gizzi* v. *Texaco, Inc.*, now reported in 437 F.2d 308 (3rd Cir. 1971), *rehearing denied* March 8, 1971, where Texaco was held possibly liable for a defective used car sold on his behalf by a dealer. The apparent authority of the dealer was held appropriate for determination by a jury.

CONCLUSION

The Dodge truck was sold as new by an authorized dealer of the manufacturer, Chrysler Corporation. It had a defect when sold which caused injury to the plaintiff's ward. The sole contention of Chrysler Corporation to avoid liability is that the defect was caused by a wholly-owned subsidiary. The law in Oklahoma is that the manufacturer is liable under these circumstances. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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September, 1971

APPENDIX

FORD MTR. CO. v. SCHWEITZER, a Minor.
No. 43096. June 15, 1971.

(Not for Publication in Official Reporter)

Appeal from District Court, Kingfisher County; F. B. H. Spellman, Trial Judge.

Action for damages for breach of implied warranty of fitness against the manufacturer of automobile. From a jury verdict for the plaintiff and a judgment based thereon, defendant appeals. Primary contention: Evidence insufficient to sustain judgment in that no evidence of defect in the car's manufacture, which could be said to have been the proximate cause of the accident, was shown. Secondary contentions of error involves ruling on evidence. Judgment affirmed.

Wm. G. Smith, Fenton, Fenton, Smith, Reneau & Moon, Oklahoma City, for plaintiff in error.

Shutler, Shutler, Baker & Simpson, Kingfisher, for defendant in error.

LAVENDER, J. This appeal, by the defendant in the trial court, arises in an action in which the plaintiff, Tommy Joe Schweitzer, a minor acting through his father, sued Ford Motor Company for damages allegedly resulting from a one-vehicle accident.

The vehicle, a Ford Mustang automobile, manufactured by the defendant, had been sold and delivered to the plaintiff, as a new car, twelve days before the accident, by an authorized Ford dealer as to whom the plaintiff dismissed his action when the case was called for trial. It was being operated by the plaintiff, on a country road, when it left the roadway and collided with the embankment of a ditch, causing personal injuries to the plaintiff and considerable damage to the left-front portion of the vehicle.

[APPENDIX]

The plaintiff's case is based upon an implied warranty of fitness of the car for use for the purposes for which such cars are manufactured, and an alleged breach of that warranty. He alleges that, at the time of the sale and delivery of the car to him, a tie-rod assembly in the steering mechanism, consisting of two ball-and-socket pieces connected together by a threaded tubular connector, was "bent, broken, cracked and otherwise defective," causing the same to function improperly, and that the defective tie-rod was the proximate cause of the car's running off the roadway and of the resulting damages to him.

Various issues were raised by the defendant's amended answer. The defendant's demurrer to the plaintiff's evidence was overruled. The defendant presented its evidence, and, when the plaintiff rested without presenting any further evidence, moved for a directed verdict in its favor. That motion was overruled and the cause was submitted to the jury. Verdict, and judgment, were rendered for the plaintiff in the amount of $6,584.84. The defendant does not attack the amount of the verdict and judgment as being excessive.

The defendant filed a motion for judgment notwithstanding the verdict and, at the same time, filed a motion for a new trial. The trial court overruled both motions, and the defendant appealed to this court by case-made.

The defendant's basic contention on appeal is that the evidence concerning the facts, with the inferences which might reasonably be based thereon, does not justify a conclusion that the tie-rod assembly in question was defective when the car was sold and delivered to the plaintiff and was a proximate cause of the car's running off the roadway and colliding with the ditch embankment. We do not agree.

This contention involves the defendant's motion for a directed verdict in its favor, made at the close of all of the evidence. Under well-established principles of review in such a situation, this court does not weigh the evidence,

but considers all of the evidence favorable to the successful plaintiff and ignores all evidence unfavorable to him. See: North American Accident Insurance Company v. Ralls, Executor, (1955), Okl., 288 P.2d 1097, 1099; Fairmont Creamery Company et al. v. Rogers (1941), 189 Okl. 320, 116 P.2d 983, 984.

The pertinent portion of the plaintiff's own testimony may be summarized as hereinafter set forth. At and prior to the time of the accident, he was eighteen years of age, living with his parents about three miles south of Okarche, Oklahoma, and working in Kingfisher, about twelve miles from his parent's home. He had purchased the car involved herein, as a new car, twelve days before the accident, from a named, authorized Ford dealer at Watonga.

During that twelve-day period, all of his driving of the car had been on pavement, black-top or good dirt roads, mostly in going back and forth between his home and his place of work, and just riding around, and he had made one or two trips to Oklahoma City. He had never driven the car over fields or pastures, and had never hit a "high center" with it. On dirt roads, he ordinarily drove from 40 to 55 miles per hour, depending upon the condition of the road. The fastest he had driven the car was "probably" between 70 and 75 miles per hour, one time on the black-top road between Okarche and his home. He had never had any trouble with the steering prior to the time of this accident.

On the night during which this accident occurred, he left Kingfisher for home about 12:30 a.m. He drove west from Kingfisher, on Highway 33, seven miles and turned south on a "dirt" road which, he said, actually was hard clay with some sand in it. It had not rained for some time and there were no ruts in the roadway.

He had driven south on that road about three-quarters of a mile, at about 40 to 45 miles per hour, when he noticed

the car "easing" or "veering" (as distinguished from turning) to the right. The right wheels got down onto the slanted near side of the ditch on that side of the road but not all the way to the bottom of the ditch, with the left wheels still on the roadway or shoulder, a foot or so to the left of the ditch. The car traveled in that position for some distance, with him trying to steer it to the left, and giving it more gas, to get back on the roadway. He testified the car would not respond to his attempts to turn the wheel. He did not try to use his brakes. He said that he must have been knocked unconscious by the collision because the next thing he remembers is "coming to" about seven to seven-thirty a.m., with the car wrecked in the ditch on the left-hand side of the road.

A garage owner who was called to tow the car to his place of business in Kingfisher arrived at the scene around eight or eight-thirty a.m. The car was in the east ditch, headed south but at a slight angle toward the east, with only the right-rear wheel on the roadway. When he pulled the car backwards from the ditch and was looking for a place to hook onto the front end to raise it for towing, he saw a tie-rod assembly in the ditch, about where the back end of the car had been before he moved it. He picked up the tie-rod and, before putting it in the plaintiff's car, noticed that it was rusty colored except for one shiny spot on a corner of the end that would be nearest to the wheel when installed, and that it was badly bent and the stud bolts at each end of the assembly had been broken off.

This witness identified an exhibit as appearing to be the tie-rod assembly that he had picked up from the ditch, but said it had been all shined up since then. He stated that a separate tie-rod assembly connects the steering spindle on each front wheel to the steering arm or bar which, in turn, is connected to the steering column and wheel, so that both front wheels turn the same way at the same time when the steering wheel is turned; that the one from the

plaintiff's car was the left tie-rod assembly; and that, if the left tie-rod is disconnected from the left-front wheel or from the steering arm or bar, the right-front wheel will still be turned either way by movement of the steering wheel. This witness further testified that no other parts of the car were found under it other than the tie-rod.

A representative of Ford Motor Company, who testified for the defendant, identified an exhibit as a new left tie-rod assembly for a Mustang of the model of the plaintiff's car. Using the two tie-rod assemblies, he pointed out where the plaintiff's tie-rod had been bent and twisted out of shape and how much of the stud bolts at each end had been broken off. He also testified that the plaintiff's car had been shipped from an assembly plant to a Ford dealer in Oklahoma City, and would have been driven from there to the Ford dealer's place in Watonga where the plaintiff purchased the car.

The highway patrol trooper who worked the accident testified as a witness for the defendant. He arrived at the scene about 7:45 a.m., and found the plaintiff's car in the east ditch, headed south but at a slight angle to the east. No one was in the car. He measured the tire tracks left by the car. The car had traveled, in a straight line, with the right wheels part way down on the sloped near side of the west ditch and the left wheels on the roadway about as far to the left of the edge of the ditch as the right wheels were to the right of it, for a distance of 240 feet, and then "broad slid" for a distance of 135 feet, across the road at an angle and into the east ditch. The car's movement to the right from the roadway onto the sloping side of the west ditch had been gradual, with nothing to indicate that the wheels had been turned to the right.

The wrecker driver had also observed the tire tracks left by the plaintiff's car. His description of them was substantially the same as the trooper's, except that he had not made any measurements, and he had noticed a "little

streak" some 12 to 14 inches to the right of the left tire tracks where the car had been on the west side of the road with its right wheels on the sloping side of the ditch. Where the car crossed the road at an angle, he didn't see the "little streak," but the track of the left-front wheel was broader than the track of the right-front wheel. He also stated that the track of the left-front wheel went part way up, and along, the far embankment of the east ditch, and that only the right-rear wheel was on the roadway when he arrived at the scene.

In Pennsylvania Glass Sand Corporation of Oklahoma v. Ozment (1967), Okl., 434 P.2d 893, this court held, in the third and fourth paragraphs of its syllabus:

> "The essential elements necessary to establish a cause of action may be inferred from all the facts and circumstances, and where the circumstances are such as to remove the case from the realm of conjecture and place it within the sphere of legitimate and rational inferences from established facts, a prima facie case is made.
>
> "In civil cases the facts are provable by direct or circumstantial evidence, or by both, and it is not required that the proof rise to such degree of certainty as will support but one conclusion to the exclusion of all others."

In the present case, a conclusion that the left tie-rod assembly in the steering mechanism of this car was defective when the car was sold and delivered to the plaintiff and was the proximate cause of the car's running off the roadway and of any resulting damages sustained by the plaintiff, would not be mere conjecture but would be within the sphere of legitimate and rational inferences from the established facts favorable to the plaintiff.

The trial court did not err in overruling the defendant's motion for a directed verdict in its favor.

The defendant contends that the trial court erred in denying its motions for summary judgment under Rule 13 of this court's rules for the guidance of the district, superior, and common pleas courts of this state (Chapter 2 of Title 2, O. S. Supps. 1965-1970). The object of that rule is to avoid a useless trial. Flick, Administratrix v. Crouch et al. (1967), Okl., 434 P.2d 256, 262; Perry v. Green (1970), Okl., 468 P.2d 483, 489. When, as in this case, the trial court denies a defendant's motion for summary judgment and a trial of the issues made by the pleadings is had, at which evidence is adduced supportive of the plaintiff's position, the reason for the rule ceases to exist insofar as that case is concerned. The question becomes academic.

The defendant presents two other propositions. One is that the trial court erred in refusing to admit into evidence certain portions of a deposition offered by the defendant. The other is that the trial court abused its discretion in refusing to permit the defendant's witnesses to use a replica of the suspension system and steering linkage of the plaintiff's car so that any jurors who had no personal knowledge of such things could understand how a tie-rod assembly fits into the suspension and steering systems of such a car and how the one involved herein could have been bent out of shape and broken off by the sudden impact and pressure on it when the left-front wheel of the plaintiff's car collided with the ditch embankment.

There was clear testimony, by the wrecker-driver who testified for the plaintiff, as well as by an expert in the field of fatigue and stresses in metals who testified for the defendant, as to where the two tie-rods fit into the steering mechanism of a car. One witness for the defendant used a new, left tie-rod for this model Mustang to show where, and how much, the plaintiff's tie-rod had been bent out of shape and how much of the stud bolts at each end had been broken off. We do not think that the replica in question was indispensible to the jurors' understanding that it was

possible for the sudden stresses of the impact of the left-front wheel of the plaintiff's car against the ditch embankment to have been transmitted through the steering mechanism to the left tie-rod, or to the jurors' determination of the proximate cause of the accident (which was their principal problem). In the circumstances, the trial court did not abuse its discretion in refusing the use of the replica in question.

There is nothing in the case-made to indicate that the depostion involved in the defendant's offer of proof was ever filed in the case. The offer, as made, indicates that the material portions of the proffered testimony would disclose the results of tests made by the witness on the tie-rod involved herein, and the witness' opinion as to the cause of the condition of the tie-rod after the accident. That testimony would have been in harmony with, and cumulative to, the testimony of a qualified expert who testified for the defendant. The offer did not include any mention of the qualifications of the deposing witness as an expert in any field. Any error in rejecting the proffered portions of the deposition in question was not prejudicial to the defendant, so is not ground for reversal of the judgment (12 O.S. 1961 §78; 22 O.S. 1961 §1068).

Affirmed.

All Justices concur.